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January 12, 2012

**VIA U.S. MAIL AND FAX (202) 245-0454**

Ms. Cynthia Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E. Street, SW  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

JAN 12 2012

Part of  
Public Record

Re: AB-303 (Sub No. 38X) Wisconsin Central Ltd., Abandonment Exemption  
in Fond du Lac County, WI

Dear Ms. Brown:

Wisconsin Central Ltd. does not object to the request for an interim trail use in the above-referenced proposed abandonment in the request made by the Wisconsin Department of Transportation on behalf of the Wisconsin Department of Natural Resources in their January 10, 2012, correspondence to you. That correspondence is incorporated herein by reference. The railroad intends to negotiate for a possible interim trail use agreement with the WDNR.

Ten copies of this letter are enclosed. Please feel free to call me if you have any questions.

Very truly yours,

Thomas J. Healey,  
Attorney for Wisconsin Central Ltd.

Enc.

cc: Kathleen Chung (via email)

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**AB-303 (SUB-No. 38x)**

**WISCONSIN CENTRAL LTD.  
- ABANDONMENT EXEMPTION -  
IN FOND DU LAC COUNTY, WISCONSIN**

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**WISCONSIN DEPARTMENT OF NATURAL RESOURCES (WisDNR)  
PETITION FOR NOTICE OF INTERIM TRAIL USE**

**BACKGROUND**

Wisconsin Central Ltd., ("WCL") filed with the Surface Transportation Board (Board) a Notice of Exemption under 49 C.F.R. § 1152 Subpart F – Exempt Abandonments to abandon a 0.60 mile line of railroad from milepost 175.40 to milepost 176.00 in Fond du Lac, Fond du Lac County, Wisconsin. The line traverses United States Postal Service Zip Code 54936.

On January 05, 2012, the Wisconsin Department of Natural Resources (WisDNR) signed a Statement of Willingness to Accept Financial Responsibility pursuant to 49 CFR § 1152.29. This statement is for the segment of WCL railroad extending from railroad milepost 175.40, located approximately at U.S. Highway 41, to railroad milepost 175.57, located approximately at W. Pioneer Road, a distance of approximately 0.17 miles, in the City of Fond du Lac, Fond du Lac County, Wisconsin.

## **PURPOSE**

Wisconsin Department of Transportation (WisDOT) petitions to reopen and to stay effectiveness of this proceeding pursuant to 49 C.F.R. § 1152.29(e)(4) and 49 C.F.R. § 1152.29(e)(7). WisDOT petitions to obtain a notice of interim trail use for interim highway, bicycle, pedestrian and other trail purposes and railbanking pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 for WisDNR for specified segments of the right of way involved in this proceeding. WisDOT and WisDNR will use or preserve the land corridor and related real property for interim public transportation and recreational purposes (including highway, pedestrian and other trail), subject to restoration for railroad purposes. WisDOT and WisDNR have agreed to work cooperatively to acquire and use the right of way.

## **STATE AND COUNTY RESPONSIBILITIES**

WisDOT is the designated state agency in rail matters in the State of Wisconsin. 49 CFR §1152.2(g), 49 C.F.R. § 266.1 and Ch. 85, Wis. Stats. WisDOT is responsible for all state and federally-aided highway construction and all state and federally-aided airport construction in Wisconsin. Secs. 84.01(2) and 114.32(1) and (5), Wis. Stats. WisDOT has the statutory first right to acquire for present or future transportation, recreational or scenic purposes any property used in operating a railroad that is abandoned in Wisconsin. Sec. 85.09(2), Wis. Stats.

WisDOT has state statutory authority to incorporate trails into the highway right-of-way in sec. 84.06(11), Wis. Stats.:

**“(11) State Trails. As a part of any highway improvement or as a separate project under this section, a portion of a hiking trail, cross-country ski trail,**

**bridle trail or bicycle trail under the management of a state agency, municipality or nonprofit may be incorporated into the highway right-of-way, and facilities for safe crossing of the highway may be provided.**

**WisDNR and WisDOT need the interim trail use designation to fulfill federal and state transportation and environmental responsibilities.**

**WisDOT respectfully requests that the Board reopen and stay the effectiveness of this proceeding to consider a trail use request pursuant to 49 C.F.R. § 1152.29(e)(4) and 49 C.F.R. § 1152.29(e)(7). Good cause exists to accept the late-filed trail use statement, because there is public benefit in allowing the trail use negotiations to go forward to preserve the corridor. Further, it was not possible to obtain required signatures over the holiday season when key WisDOT and WisDNR employees were unavailable. The Board retains jurisdiction because abandonment has not yet been consummated. Finally, WCL has indicated to WisDNR that it is willing to enter into trail negotiations.**

#### **NOTICE OF INTERIM TRAIL USE**

**If the petition to reopen and request to stay effectiveness is granted by the Board, WisDOT respectfully requests that the Board provide WisDNR a notice of interim bicycle, pedestrian and other trail use and rail banking condition to accomplish the above public purposes. WisDOT is interested in having WisDNR acquire and use the right of way of the rail line being abandoned for interim bicycle, pedestrian or other trail use and rail banking.**

**Included in this petition is a Statement of Willingness to Assume Financial Responsibility, executed by the Wisconsin Department of Natural Resources (WisDNR),**

which includes Exhibit 1, a map of the location of all needed property in Fond du Lac, Wisconsin.

WisDNR's acquisition of the corridor for present and future transportation purposes as stated above is consistent with all Congressional purposes and neither abandonment nor discontinuance permitted by the Board conditioned as requested by WisDNR would be inconsistent with or disruptive of potential future rail use.

### CONCLUSION

WisDOT respectfully requests the Board to reopen and stay effectiveness of this proceeding to issue a Notice of Interim Trail Use for the land corridor and related real property, for the segment of WCL railroad, from milepost 175.40 located approximately at U.S. Highway 41, to railroad milepost 175.57 located approximately at W. Pioneer Rd., a distance of approximately 0.17 miles in Fond du Lac, Fond du Lac County, Wisconsin to WisDNR. This will allow all forms of transportation to be provided in a unified, interconnected, economically efficient and environmentally sound manner.

Respectfully Submitted,

*Kathleen Chung*

Kathleen Chung, State Bar No. 1032802  
Wisconsin Department of Transportation  
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January 10, 2012